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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/620,474

07/16/2003

Darwin Rambo

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EXAMINER

HAN, QI

ART UNIT

PAPER NUMBER

2626

MAIL DATE

DELIVERY MODE

10/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/620,474</p>	<p>Applicant(s) RAMBO ET AL.</p>	
	<p>Examiner QI HAN</p>	<p>Art Unit 2626</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 11-13, 15-17 and 19-54.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Qi Han/
Examiner, Art Unit 2626

Continuation of 11. does NOT place the application in condition for allowance because: the applicant's arguments in the amendment filed on 09/10/2008, regarding claim rejection under 35 USC 102/103 in the final office action, are not persuasive.

a. In response to applicant's arguments regarding claim 19 that "Goodman, at col. 4 lines 12-13, describes that a type of codec may be used to determine a level of service to perform a voice call listening quality test in which a speech sample is transmitted between a first probe to a second probe. Thus, this has nothing to do with "receiving a selected output from a signal processing element of said one or more signal processing elements... Thus, the Applicants respectfully submit that the Office Action has not shown a teaching of each and every element that is recited in Claim 19" (Remarks: page 14, paragraph 1), the examiner respectfully disagrees with the applicant's arguments and has a different view of the prior art teachings and the claim interpretations. It is noted that the prior art does disclose all limitations of the claim, including the argued limitation, based on broadest reasonable interpretation of the claim. It should be pointed out that the claimed/argued limitation "a selected output from a signal processing element of said one or more signal processing elements" is broad. It is also noted that there is no specific or detailed information in the claim for the terms "signal processing elements" and its "output", and even no any specific information in the specification for the terms "selected output", so that, as stated in the rejection, the 'gateway', 'IP communication devices', and 'codecs (i.e. coders/decoders)' disclosed by Goodman (Figs. 1-2, col. 3, lines 12-27 and col. 4, lines 12-33) can all be read on "signal processing element". Accordingly, any information/signal from these elements can be read on the claimed "output", and the disclosure of 'the voice listening quality test (implying receiving some output to test) is performed for each level of service as determined by the type (selected by type) of codec...' (Goodman: col. 4, lines 3-17) can be properly read on the claimed/argued limitation. Further, it is noted that other portions of the disclosure (such as quality test model, algorithm and PAMS/PSQM measurements) cited in the rejection are also read on the claimed/argued limitation (see detail in the claim rejection), but the applicant failed to respond to these portions of disclosure in the rejection.

b. In response to applicant's arguments regarding claim 29 that "Based on the preceding passage obtained from Goodman, at col. 5, lines 17-25, there is no teaching of "said configuration data used in determining said selected output from one or more outputs corresponding to said one or more signal processing elements" (Remarks: page 16, paragraphs 2-3), the examiner respectfully disagrees with the applicant's arguments because this claim depends on its parent claim(s) and the rejection for all parent limitations that is related/linked to this dependent claim limitation must be considered as a whole. In this case, the argued limitation directly is connoted to the rejected limitation of claim 1, which had been properly rejected as stated the rejection of claim 1, and the applicant failed to provide persuasive arguments and/or failed to fully respond to the rejection of claim 1 (see above). It can be seen that the rejection based on the cited portions of prior art teachings of claim 29 and the related rejection of its parent claim 1 covered all claimed limitations. Further, even with cited portions of prior art disclosure for claim 29, the rejection still properly addressed and covered the argued limitation, based on broadest reasonable interpretation of the claim with the same or similar reason regarding "signal process elements" and "selected output" as stated for claim 1 (see above). Moreover, it is noted that the prior art teachings should be considered as a whole, not only one specific portion.

c. In response to applicant's arguments regarding claim 11 that "the Applicants maintain that the Office Action has not shown a teaching of "receiving said reference speech samples captured at one or more processing points within a gateway of said communication system," as recited in Claim 11" (Remarks: pages 9-10; and page 17-18, bridge paragraph), the examiner respectfully disagrees with the applicant's arguments and has a different view of the prior art teachings and the claim interpretations. It is noted that the prior art (Goodman) not only "describes transmitting speech samples from a first test probe to a second test probe (through one or more gateways)" as admitted by the applicant (Remarks: page 10, paragraph 1), but also teachings the argued limitation (see Goodman: Figs. 5-6, col. 9, line 24 to col. 10, line 13 and col. 3, lines 23-27), wherein VOIP communication device can be gateway that has an embedded reference voice file and a codec to be evaluated, so as being properly read on the claimed.

d. Regarding other claim, the response to the applicant's arguments (Remarks: page 18, paragraph 2 to page 21, paragraph 1) is based on the same reason described for claims 19 and 29, because the arguments are based on the same issue(s) as claims 19 and 29 stated above.

For the above reasons, the rejection is sustained..